

**UNITED STATES PATENT AND TRADEMARK OFFICE**

*Examiner:*

*Group:*

*Attorney Docket #.: 4433*

In re:

Applicant(s): ASCHKE, L.

Serial No.: 10/825,618

Filed: 04/16/2004

**RENEWED PETITION TO REVIVE**

December 22, 2008

Honorable Commissioner of  
Patents and Trademarks  
Washington, D.C. 20231

Reference is made to the communication of October 30, 2008 and October 27, 2008 which have been copied to the undersigned.

The refusal to recognize the undersigned as attorney for the applicant is not understood in view of the provisions of 37 CFR 1.34.

In any event the required statement under 37 CFR 3.73(b) is now submitted herewith.

It is requested that the undersigned now be recognized as attorney for the applicant.

A statement from the owner of the invention at the time of abandonment explaining why action was not timely taken to prevent the application from becoming abandoned has been required.

In response thereto, there is attached to this renewed Petition a statement prepared on behalf of the owner of the invention, explaining in detail why timely action to prevent the abandonment was not taken.

Additionally, there is submitted herewith supporting declarations of Dr. Tilo Blasberg who is mentioned in the document entitled, Information on Patent Department/Department Work @ SCHOTT, and Dr. Anke Gubenator.

Favorable consideration of applicant's Petition to Revive is now respectfully requested.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Michael J. Striker', with a long horizontal flourish extending to the right.

Michael J. Striker  
Attorney for Applicant  
Reg. No.: 27233  
103 East Neck Road  
Huntington, New York 11743

**STATEMENT UNDER 37 CFR 3.73(b)**

Applicant/Patent Owner: SCHOTT AG

Application No./Patent No.: 10/825,518

Filed/Issue Date: April 16, 2004

Entitled: MASK BLANK FOR USE IN EUV LITHOGRAPHY AND METHOD FOR ITS PRODUCTION

SCHOTT AG

(Name of Assignee)

JOINT STOCK COMPANY

(Type of Assignee, e.g., corporation, partnership, university, government agency, etc.)

states that it is:

1. ☒ the assignee of the entire right, title, and interest; or  
2. ☐ an assignee of less than the entire right, title and interest  
(The extent (by percentage) of its ownership interest is \_\_\_\_\_ %)

In the patent application/patent identified above by virtue of either:

- A. ☒ An assignment from the inventor(s) of the patent application/patent identified above. The assignment was recorded in the United States Patent and Trademark Office at Reel 015726, Frame 0026, or for which a copy therefore is attached.

OR

- B. ☐ A chain of title from the inventor(s), of the patent application/patent identified above, to the current assignee as follows:

1. From \_\_\_\_\_ To: \_\_\_\_\_

The document was recorded in the United States Patent and Trademark Office at

Reel \_\_\_\_\_, Frame \_\_\_\_\_ or for which a copy thereof is attached.

2. From \_\_\_\_\_ To: \_\_\_\_\_

The document was recorded in the United States Patent and Trademark Office at

Reel \_\_\_\_\_, Frame \_\_\_\_\_ or for which a copy thereof is attached.

3. From \_\_\_\_\_ To: \_\_\_\_\_

The document was recorded in the United States Patent and Trademark Office at

Reel \_\_\_\_\_, Frame \_\_\_\_\_ or for which a copy thereof is attached

☐ Additional documents in the chain of title are listed on a supplemental sheet.

- ☒ As required by 37 CFR 3.73(b)(1)(ii), the documentary evidence of the chain of title from the original owner to the assignee was, or concurrently is being, submitted for recordation pursuant to 37 CFR 3.11.

(NOTE: A separate copy (i.e., a true copy of the original assignment document(s)) must be submitted to Assignment Division in accordance with 37 CFR Part 3, to record the assignment in the records of the USPTO. See MPEP 302.08)

The undersigned (whose title is supplied below) is authorized to act on behalf of the assignee.

Thomas Herbach i.v. Dr. Anke Gubernator

Signature

Date

Thomas Herbach Dr. Anke Gubernator

Printed or Typed Name

November 27, 2005

44 613 66 44 85

Telephone Number

Authorized Officer Authorized Agent

This collection of information is required by 37 CFR 3.73(b). This information is required to obtain or retain a benefit by the public when it is to the benefit by the USPTO to process an application. Confidentiality is governed by 35 U.S.C. 102 and 37 CFR 1.11 and 1.54. This collection is estimated to take 12 minutes to complete, including preparing, reviewing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1460, Alexandria, VA 22313-1460. DO NOT SEND PERS OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1460, Alexandria, VA 22313-1460.  
If you need assistance in completing the form, call 1-800-PTO-9199 and select option 3.

### **Information on patent department/patent work @ SCHOTT:**

I (Dr. Anke Gubernator) joined the SCHOTT patent department in 2001 and have been in charge of the Lithotec patent portfolio since end of 2001. Regarding the patent portfolio of Schott Lithotec I mainly worked together with the two patent coordinators at Schott Lithotec (Dr. Oliver Goetzberger and Mr. Andreas Voitsch) and with Mr. Konrad Knapp (Head of business development, Schott Lithotec, responsible for patent strategy of Schott Lithotec). Patent coordinators at Schott support the patent department i.a. in view of technical information and detailed knowledge of the patent applications, since most of the patent applications are handled by external patent attorneys.

From 1. Dec. 2006 to 31.10.2007 I was temporarily absent from work at Schott due to the birth of our son in Jan. 2007.

During my absence, my colleague Ludwig Wirth had been in charge of the Lithotec patent portfolio (in addition to the patent portfolios of two other Schott business units).

### **Information on Schott Lithotec:**

Until 2006, Schott Lithotec had two business units, namely the business unit Materials, developing, producing and selling materials for microlithography such as calcium fluoride and fused silica; and the business unit Components, developing, producing and selling mask blanks for microlithography. Both business units had a patent coordinator (Dr. Oliver Goetzberger for Components and Mr. Andreas Voitsch for Materials).

The business unit Components comprised of two production sites:

1. a production site in Meiningen, Germany, developing and producing high end photomask blanks, i.e. phase shift photomask blanks for 193 nm microlithography and reflective photomask blanks for extreme ultra violet (EUV, @ 14.3 nm) microlithography;
2. a production site in Poughkeepsie, U.S.A. producing binary photomask blanks (standard photomask blanks)

In spite of good technical results in particular regarding EUV photo mask blanks, the production site at Meiningen was closed end of September 2006. Almost all staff members left Schott including the patent coordinator Dr. Goetzberger.

The production site in Poughkeepsie was closed in April 2007. Almost all staff members were dismissed.

After Dr. Goetzberger left Schott Lithotec, Mr. Voitsch (patent coordinator Materials) also became in charge of the portfolio of the business unit Components (Mask Blank Portfolio). However, due to the completely different technical field (mask blanks vs. materials) it was difficult for him to handle the Mask Blank Portfolio. It became even more difficult, after also Mr. Knapp (former head of business development of Schott Lithotec, who had detailed technical knowledge regarding mask blanks) left Schott in early spring 2007.

Furthermore, the business unit Materials of Schott Lithotec also was reorganized in 2007. Besides materials for microlithography, Schott Lithotec started to produce polycrystalline silicon for photovoltaic applications. This part of Schott Lithotec's business was transferred in another legal entity (Wacker Schott Solar GmbH, a joint venture enterprise of SCHOTT AG

and Wacker Chemie AG). Mr. Voitsch also changed from Schott Lithotec to Wacker Schott Solar in summer 2007.

Mr. Johann-Christoph von Saldern joined Schott Lithotec in December 2007 as the new patent coordinator of Schott Lithotec.

Furthermore, due to reorganization, the upper management changed almost completely at Schott Lithotec in 2006/2007:

- Dr. Martin Henning (former CEO of Schott Lithotec) left Schott Lithotec in October 2006
- Dr. Robert Kuba (former CTO of Schott Lithotec) left Schott Lithotec in June/July 2007
- Dr. Patrik Markschläger (PK) left Schott Lithotec in July 2007

#### **The patent application P 2131:**

After the closing of the production sites at Meiningen and Poughkeepsie, some of the Mask Blank Portfolio patents were given up, others were substance to licensing/selling activities.

The subject-matter of US s/n 10/825,618 "Mask blank for use in EUV lithography and method for its production" (our file no. P 2131 US) was also filed in the following countries: Germany (our file no. P 2131; priority application), People's Republic of China (our file no. P 2131 CN), Europe (our file no. P 2131 EP), Japan (our file no. P 2131 JP), Republic of Korea (our file no. P 2131 KR), Taiwan (our file no. P 2131 TW).

P 2131 US was/is considered as a strategically important patent and it was part of the aforementioned patent portfolio that should have been sold.

Our file originally mentions that the US patent should be kept alive and the fees for granting should be paid. The file also mentions that no further costs should arise in the (less important) parallel European and Asian applications.

Our German patent attorney, Dr. Blasberg, received the Notice of Allowance dated June 20, 2007 on June 29, 2007, forwarded it to our patent department on the same day and asked for permission for payment of the issue fee. Dr. Blasberg received instructions from us on July 2, 2007 and sent corresponding instructions to our US patent attorney (Millen White Zelano & Branigan). As the claims intended for grant in the U.S. were different as compared to our instructions sent previously, our German patent attorney Dr. Blasberg instructed our US patent attorney to request correction of the claims, which was performed accordingly,

On August 2, 2007 our German patent attorney Dr. Blasberg received the Supplemental Notice of Allowability dated July 25, 2007. As Dr. Blasberg was informed about the substantial changes at Schott Lithotec, Dr. Blasberg forwarded the Supplemental Notice of Allowability to our patent department and asked again for instructions with regard to payment of the issue fee in order to enable a new decision-making at Schott Lithotec, taking into account the recent changes there. Dr. Blasberg mentioned the substantial costs and efforts made for preparing the response to the first Office Action, and thus proposed to pay the issue fee despite these changes.

The extraordinary circumstances of grant in this case –Notice of Allowance, afterwards filing of amendments, then Supplemental Notice of Allowability – obviously caused confusion on our side.

Due to a misunderstanding of an internal note in our file concerning the different processing of this U.S. patent application (our file no. P 2131 US), for which grant was always desired, and the other members of the patent family our German patent attorney Dr. Blasberg was then mistakenly instructed not to pay the issue fee. Dr. Blasberg then communicated these instructions to our US patent attorney, contrary to our intention to ensure grant of this U.S. patent but to abandon only the other members of this patent family.

On around January 2008, the new patent coordinator Mr. Saldern asked the patent department for a statement on the status the Lithotec patent portfolio. On January 26. 2008, Ms. Wittenstein looked for the status of P 2131 US via the USPTO online portal and found out that the patent application was deemed withdrawn. On the same day, our German patent attorney was informed and Dr. Blasberg urgently faxed a letter to our US patent attorney (Millen et al) on January 29, 2008 regarding a possible reinstatement of the patent application.

### Declaration

I, Dr. Anke Gubernator, hereby declare as follows:

I herewith state that I prepared the document entitled Information on Patent Department/Patent Work @ SCHOTT.

I herewith state, based upon my best information and belief, that the information set forth therein is true and accurate.

I further herewith state, based upon my best information and belief, that the abandonment of U.S. Patent Application Serial No. 10/825,618 was unintentional and that the entire delay from the due date for reply to the date of filing of a grantable petition was unintentional.

I hereby declare that all statements made herein of my own knowledge are true and that all statements on information and belief are believed to be true; and further that those statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Dated: Dec. 17, 2008

Anke Gubernator  
DR. ANKE GUBERNATOR

### Declaration

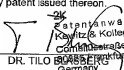
I, Dr. Tilo Blasberg, herewith state that I have read and understand the document entitled Information on Patent Department/Paper Work @ SCHOTT.

I herewith state that based upon my best information and belief, that all statements made therein, including with particularity the statements relating to my participation, are true and accurate.

I further state, based upon my best information and belief, that the abandonment of the subject application Serial No. 10/825,618 was unintentional and that the entire delay from the due date for reply to the date of filing of a grantable petition was unintentional.

I hereby declare that all statements made herein of my own knowledge are true and that all statements on information and belief are believed to be true; and further that those statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Dated: 16/12/08

  
DR. TILO BLASBERG  
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